those sold inside, where it could be said to be the shop or part of the shop. I see the point made by Mr. Ghows, learned Crown Counsel, that the purpose of the legislation is to protect employees and the law might be evaded by having employees selling goods outside the shop. That may be so. It is not for me, I think, to express a view upon that. The question I have to decide is whether this area or pavement upon which the goods were sold can be held to be premises or part of the shop. Well now, can a bit of pavement without a stall, without any form of equipment, may I put it that way, can it be held to be premises within the meaning of the Shop Assistants Employment Ordinance? I suppose there might be two views on it. But I must say that my view is that it cannot. I think that a five-foot-way or a pavement outside the shop is not premises and in the absence of any direct authority it seems to me reasonable to hold that they are not premises. That being so, it seems to me that we need not go into the details of what these two ladies bought on that particular day. The first charge must therefore fail and the appeal must be allowed as to that.

The question then arises as to the second charge which is that the appellant failed to exhibit Form A permanently in a conspicuous place in the said shop. Now I must say that I think here that learned Crown Counsel will probably agree that this was part of the history of the first charge and I think if the first charge fails I really do not see that the second charge can stand because the shop in question was shut on the day in question and without wishing to lay down any principle of law in conflict with anything that Lord Justice Parker may have said I should have thought myself that if your shop is closed that you are not defeating any great purpose of the legislature if your Form is taken down from its hook and put into a drawer and put on a hook again when you open the next morning.

The appeal must therefore be allowed and the conviction and sentences set aside. The fines will be refunded.

Appeal allowed.

PUBLIC PROSECUTOR v. MOHAMED ALI

[A. Cr. J. (Thomson C.J.) February 9, 1962]

[K.L. — Criminal Appeal No. 3 of 1962]

Evidence — Police witness — Acceptance of, in absence of contradiction or inherent probability.

Road Traffic — Evidence of speed limit area — Evidence Ordinance, 1950, s.57(1)(a) — Judicial notice of legal notification — Refusal to accept evidence of police witness.

When a police witness says something that is not inherently improbable his evidence must in the first instance be accepted. If his evidence is contradicted by other evidence or is shaken by cross-examination then it becomes the business of the Magistrate to decide whether or not it should be accepted. In the absence of contradiction, however, and in the absence of any element of inherent probability the evidence of any witness, whether a police witness or not, who gives evidence on affirmation, should normally be accepted.

Observations on Magistrates taking judicial notice of legal notifications.

CRIMINAL APPEAL.

Raja Abdul Aziz (Deputy Public Prosecutor) for the appellant.

Respondent not represented.

Thomson C.J.: This is an appeal against a judgment of one of the Kuala Lumpur Magistrates and I am compelled to say straightaway that I have seldom come across anything more perverse or lacking in rudimentary commonsense.

The respondent was charged with driving a motor van in Princes Road, Kuala Lumpur, at a speed exceeding 20 miles per hour. He claimed trial and at the close of the prosecution case the Magistrate held there was no case to answer and made an order of acquittal and discharge. The Public Prosecutor appealed against that decision and some time later the Magistrate put on record grounds of judgment which would appear to have very little in common with whatever he had in mind when he discharged the respondent.

The evidence for the prosecution was that of a Police corporal who said that he was on duty on a motor-cycle in Princes Road when he saw the respondent driving a motor van. He followed the van for about half a mile and his speedometer showed between 35 to 38 miles per hour. He then overtook the van and stopped it. He said "Princes Road is a 20 m.p.h. area". This witness was not cross-examined by the defendant nor was he asked any question by the Magistrate, who when he had heard his evidence dismissed the summons.

In his grounds of judgment the Magistrate has given two reasons for taking that course.

The first is that the complainant, that is the Police corporal, "only suspected that the defendant was speeding because when he followed the defendant his motor-cycle speedometer was showing 35-38 m.p.h. This may be quite true because he had to speed up in order to reach behind the defendant's car. But what was the actual speed of the defendant's car at that time?" This passage is simply putting words into the witness's mouth. The witness did not say anything about having to increase his speed to "reach behind" the respondent's van. What he said was that he followed it for about half a mile. If the Magistrate had had any doubts as to what the witness intended to convey he should have asked him a question to elucidate his meaning.

The second reason stated by the Magistrate was that the witness stated: "that Princes Road

was a 20 m.p.h. area but what evidence was adduced to substantiate it? None whatsoever."

On this I have two observations to make.

The first is that the Magistrate was bound by section 57(1)(a) of the Evidence Ordinance, 1950 to take judicial notice of Legal Notification No. 44 of 1956 which is a regulation having the force of law and which imposes a speed limit of 20 miles an hour on Princes Road from its junction with Batu Road to its junction with Circular Road. This Notification was quoted in the charge; and, even if it had not been, it was the Magistrate's business to ascertain whether or not it existed, for the slightest exercise of commonsense would have suggested that there would be some such restriction on a busy road like Princes Road.

In the second place, the refusal to accept the evidence of the Police witness was very offensive. That witness said there was a 20 miles per hour speed limit in force. His evidence was not accepted and the only reason stated for refusing to accept it was that no evidence was "adduced to substantiate it". The witness is a traffic policeman, presumably by reason of his rank of some experience. He was unlikely to be mistaken and to refuse to accept his evidence on a point like this on the ground that it was not "substantiated" was neither more nor less than to call him a liar.

If Magistrates are going to adopt this sort of attitude to Police evidence in connection with road traffic cases there will be an end to all law enforcement in the country. When a Police witness says something that is not inherently improbable his evidence must in the first instance be accepted. If he says he saw a cow jumping over the moon his evidence is, of course, not to be accepted, but if he says he saw a cow wandering along one of the main streets of Kuala Lumpur (the sort of thing we all see every day of our lives) there is not the slightest justification for refusing to believe him. Of course if his evidence is contradicted by other evidence or is shaken by cross-examination then it becomes the business of the Magistrate to decide whether or not it should be accepted. In the absence of contradiction, however, and in the absence of any element of inherent improbability the evidence of any witness, whether a Police witness or not, who gives evidence on affirmation, should normally be accepted.

As regards the present appeal, the order of acquittal is set aside.

Order of acquittal set aside.

PUBLIC PROSECUTOR v. YEOH THEAN HOCK

[A. Cr. J. (Hepworth J.) March 13, 1962]

[Penang — Criminal Appeal No. 4 of 1962]

Criminal Law and Procedure — Police supervisee — Failure to report at right time and place — Criminal Procedure Code (Cap. 21), s.14 — Sentence.

Criminal Law and Procedure — Imprisonment in course of police supervision term.

In this case the respondent, a police supervisee, had been convicted in the Magistrate's Court, Penang, of failure to report at the right time and place, and was sentenced to one day's imprisonment. The Public Prosecutor appealed on the ground that the sentence was manifestly inadequate.

Held: in Penang where the Straits Settlement's Criminal Procedure Code (Cap. 21) applies, where a person is subsequently imprisoned during the course of a term of police supervision the period of police supervision continues to run during the imprisonment. The period of police supervision relating to the offence charged having expired prior to the date upon which such offence was alleged to have been committed, the appeal should be dismissed and the conviction quashed.

Per Curiam: Where a police supervisee fails without any or any adequate excuse to report at the appropriate time and place and is properly convicted of an offence to that effect a sentence of one day's imprisonment is manifestly inadequate.

CRIMINAL APPEAL.

Wan Suleiman bin Pawan Teh (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Hepworth J.: This was an appeal by the Public Prosecutor against sentence. The respondent had been convicted in the Magistrate's Court, Penang, of the offence under section 14 of the Criminal Procedure Code of failing, as a person subject to the supervision of the Police, to report at the right time and place. On conviction the respondent had been sentenced to one day's imprisonment. The Public Prosecutor appealed on the ground that the sentence was manifestly inadequate.

At the outset of the appeal the learned Deputy Public Prosecutor very properly drew my attention to a point of law which he said might, and in fact did, show that the conviction was wrong.

Under the Criminal Procedure Code of the former Federated Malay States (F.M.S. Cap. 6) the provisions relating to orders of police supervision are contained in section 295 and subsection (ii) of that section reads:—

"(ii) When any person subject to the supervision of the police is, while still subject to such supervision, sentenced to a term of imprisonment within the Federated Malay States any term spent in prison shall be excluded from the period of supervision."